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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 THOMAS W. SEITER,

10 Plaintiff,

11 v.

12 YOKOHAMA TIRE CORPORATION, a  
13 Delaware Corporation,

14 Defendant.

Case No. C08-5578 RBL

ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT  
YOKOHAMA TIRE  
CORPORATION'S MOTION FOR  
SUMMARY JUDGMENT

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16 This is an employment action wherein Plaintiff Thomas Seiter has sued Yokohama Tire  
17 Corporation (YTC) for wrongful termination, alleging that YTC retaliated against him in response  
18 to a series of tire safety and warranty fraud complaints he lodged with his employer over the final  
19 year of his employment. Plaintiff alleges a constructive discharge in violation of public policy  
20 and/or in violation of YTC's promises of specific treatment, discrimination based on disability  
21 (dyslexia), and that YTC violated Washington wage statutes.

22 Presently before the Court is Defendant YTC's motion for summary judgment seeking  
23 dismissal of Plaintiff's claims in their entirety. The Court, having reviewed the pleadings and  
24 record herein, is fully informed and hereby GRANTS IN PART and DENIES IN PART the motion  
25 for summary judgment.

26 ORDER - 1

## Introduction and Background

Yokohama Tire Corporation is the North American affiliate of an international tire manufacturer. YTC has operated in the United States for over forty years and sells tires through over 4,500 points of sale. Seiter began working for YTC in 1987 and stayed with YTC until December 2007. Initially, Seiter worked for YTC as a salesman in the Midwest; he then transferred to the Pacific Northwest in 2001 to take over a new sales area. His last position with YTC was as Senior District Representative and his job duties consisted of selling tires to national accounts, either to large clients with fleets, such as trucking companies, or wholesale dealers who would sell the tires directly to customers.

Seiter suffers from dyslexia and was diagnosed in early childhood. YTC executives were aware of Mr. Seiter's learning disability and commented in his performance evaluations that he continually struggles with communication in his writing abilities and that because of his disability he "does things a bit different than the rest of us." Seiter asserts that due to his disability, he was denied promotions in the 1990s while working in the Midwest.

YTC maintains a "Code of Ethics" which places an affirmative duty on employees to report ethical violations. Employees who violate the provisions of the Code may be subject to disciplinary action, up to and including dismissal. The Code prohibits unlawful discrimination and/or harassment by any employee of YTC. Upon receipt of a complaint of harassment or discrimination, YTC is required to immediately undertake an effective, thorough and objective investigation of the allegations and if warranted, take remedial action to deter future harassment or discrimination. The Code prohibits retaliation against an employee for reporting in good faith incidents of discrimination or harassment. Any employee who retaliates against another for making a complaint is subject to disciplinary action, up to and including termination.

The Code also requires employees to report any unethical, dishonest or illegal conduct reasonably suspected to have been committed by another YTC employee. Any form of retaliation

1 directed at an employee who notifies YTC of a suspected violation of the Code is prohibited.

2 The Code provides that it is not a contract of employment and as an employee of YTC  
3 subject to the Code, employment is "at will" and YTC is free to terminate employment at any time  
4 for any reason or no reason.

5 YTC has a Business Expense and Reimbursement Policy Number 10106 (Expense Policy),  
6 that was last revised on December 15, 2003. The Expense Policy was introduced to ensure that  
7 employees properly recorded their reimbursable business expenses. The Expense Policy applies to  
8 all employees and explains that expense reports should present the facts fully and clearly, and that  
9 all expenditures must be supported with original receipts. The Expense Policy also requires that  
10 expenditures for business meals have an explanation of the date, business relationship, place,  
11 purpose, amount and number of employees attending.

12 Prior to 2006, YTC had never strictly enforced its expense reporting policies. On January  
13 19, 2006, Jim MacMaster, who was Vice President of Sales for the Business Division at the time,  
14 emailed all business division directors a copy of the Policy and requested that they begin enforcing  
15 it more strictly in an effort to reduce company waste. On June 18, 2007, Koji Kanemoto, Director  
16 of Internal Audit, sent a company-wide email noting that employees should "always retain the  
17 original receipt which shows in detail what you purchased or ate and submit that in support of your  
18 reimbursement request for all expenses, whether paid for in cash or charged." Following this, on  
19 August 8, 2007, the Company President and CEO issued a memorandum to all staff explaining that  
20 past expense reporting practices were unacceptable and the Expense Policy must be adhered to.  
21 This Company wide memo informed all YTC employees that an audit had uncovered an alarming  
22 pattern of abuse and fraud, that employees should not "pad, create, misuse or otherwise alter true  
23 receipts," that YTC would continue to sample expense reports, and employees should be aware that  
24 they may be audited.

1 In the summer of 2006, Seiter reported to YTC management concerning customer  
2 complaints regarding a YTC tire. Seiter reported that he was getting two to three calls a week on  
3 model MY507A tires being out-of-round. Seiter stated that they had been aware of this problem for  
4 over 17 months and the problem is getting worse and that some truck drivers felt it was unsafe to  
5 drive with these tires. Seiter stated that YTC "better be careful on this problem if there is an  
6 accident with this MY507A, [the company] could be held liable for not fixing the problem."

7 CFO Jim MacMaster replied to Seiter stating:

8 I completely understand the frustration that you and truck tire division are  
9 experiencing over the out of round conditions that have existed and continue to exist  
10 on the MY507A. However, using the terminology of "unsafe" is both incorrect and  
11 dangerous it is purely editorializing a situation as out of round is "not" a safety issue.  
By trying to bring attention to this in this fashion you are potentially exposing the  
company and individuals in the company to potential criminal proceedings under the  
TREAD act doctrine.

12 The only advice I can provide to Lou and Tom under the circumstance is to correctly handle  
13 any customer complaints and provide a fair compensation until the root cause can be  
14 determined and the problem eliminated. In the interim you should stop selling the tire into  
15 the market if it is creating so much damage to the image and reputation of you and our  
company. In the future please refrain from making inflammatory comments of which could  
result in personal jeopardy of you and others.

16 Seiter considered this response an overt threat and stern directive for Seiter to keep quiet  
17 about events that could trigger TREAD Act<sup>1</sup> reporting or penalties, and if he refused then he would  
18 suffer the consequences. Customers continued to bring forward safety concerns and Seiter  
19 continued to raise those safety issues with management.

20 Soon, another YTC tire, the MJOI, also began experiencing similar problems, only much  
21 worse (extreme tread failure including severe cracking and severe rib tearing). Seiter began

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22 <sup>1</sup>The TREAD Act was passed by Congress in 2000 and has been incorporated into the  
23 existing National Traffic and Motor Vehicle Safety Act of 1966 (NHTSA), codified at 49 U.S.C. §§  
24 30101-30170. The "Early Warning" requirements of the TREAD Act mandate that a tire  
25 manufacturer report recalls, warranty and customer satisfaction claims. The "Early Warning"  
requirement enables the NHTSA to collect data, notice trends, and warn consumers of potential  
defects in vehicles.

1 documenting in company records that the failures constituted "A code" safety and warranty defects.  
2 However, in spring of 2007, Seiter began noticing that his A code designations were being changed  
3 to more benign "B-codes;" the change to a B code signifying that the problems were now being  
4 recorded as mere "customer satisfaction" issues rather than the previously flagged safety and  
5 warranty defect issues that may trigger TREAD Act reporting. In order to substantiate his  
6 complaints, Seiter took a series of photos of the rib tearing, showing the tread literally peeling off,  
7 and forwarded them to his managers as email attachments.

8 Contemporaneously with Seiter's reporting of the tire safety and warranty issues, he became  
9 the subject of a "routine random audit" of his business expense reports. Although the final audit  
10 report indicates that Seiter's expense records were but one of 15 employee records randomly  
11 selected for audit, Seiter states that he was informed by YTC's Director of Internal Audit, Koji  
12 Kanemoto, that he was being audited because Kanemoto's direct supervisor at the time, YTC  
13 President Nono Karashima, had instructed him to specifically audit Seiter.

14 Seiter responded to the audit in August 2007 with a lengthy explanation of his expense  
15 reporting. Seiter explained that his records were somewhat in disarray due to his dyslexia. The  
16 audit did not find anything out of order with Seiter's travel and lodging expenses. The audit did  
17 raise concerns regarding meal expense reports where the receipts had the bottom or top cut off.  
18 Seiter explained that he cut the receipts so that he could roll legitimate expenses into a meal  
19 allowance, including items such as snacks and soft drinks. He further stated that when informed  
20 that this was an inappropriate procedure, he quit tearing the tops off of the receipts.

21 The YTC auditor was apparently dissatisfied with Seiter's explanation and requested Seiter  
22 provide YTC with his credit card history for the 2007 fiscal year. Seiter became concerned that the  
23 audit was being conducted in response to his reporting of the safety and warranty concerns with the  
24 MY507 and MJO1 tires. Seiter expressed his concerns to the Director of Human Resources, Steve  
25 Kessing. Kessing responded, stating that the audit was confined to expense issues and that he was

1 unaware of the warranty and safety issues raised by Seiter. Kessing again requested Seiter provide  
2 the credit card statements to verify his expenses and his failure to do so by November 7, 2007,  
3 would result in the Company concluding the investigation with the information it had.

4 Seiter responded on November 7, 2007. He told Kessing that he would not provide his  
5 credit card statements and that his dyslexia caused him to make mistakes in recording the correct  
6 dates more than he would have liked. He also said he felt the decision to fire him or get him to quit  
7 had already been made.

8 Seiter states that employees had been in contact, letting him know that the word was out that  
9 he would soon be fired.

10 A Vice President of Sales, Dan King, had responded to a message from Seiter expressing  
11 empathy with Seiter and acknowledging that the audit procedure he was subject to was a hassle and  
12 might even be viewed as an invasion of privacy. He recognized that there had been much  
13 confusion on the proper procedure for expense reporting in the past. He then emphasized that the  
14 auditor simply needed to review his credit card statements so that they could match the record with  
15 his receipts. King indicated that the company needed to understand Seiter's situation and then they  
16 could move past this issue and focus on selling product, at which Seiter was one of the best.

17 In a subsequent message, Dan King informed Seiter that he could not help Seiter regarding  
18 the audit and that Seiter was on his own.

19 During the course of a nearly five month investigation, the auditor, Koji Kanemoto, made  
20 statements which led Seiter to believe that he was being accused of engaging in fraud and deceit.  
21 During this period, Seiter had lodged at least three complaints under the Company Code of Ethics  
22 reporting that he felt he was being retaliated against because of his safety and warranty fraud  
23 complaints. Those complaints went to his Zone Manager, Lou Kardonsky, and Director of Human  
24 Resources, Steve Kessing.

25 On November 19, 2007, Seiter sent letters to Kessing and Kardonsky notifying them that

1 he was resigning. Seiter's letter of resignation was accompanied by his physician's  
2 recommendation that he seek other employment to reduce stress levels. Seiter stated in his  
3 resignation letter that he felt that YTC was seeking to pressure his resignation and conducted the  
4 audit of his expense reports in retaliation for his reporting of tire safety concerns.

5 YTC responded to Seiter's resignation letter stating it deeply regretted his decision to leave  
6 the company rather than cooperate with the expense audit. The response further indicated that the  
7 audit had nothing to do with his raising tire safety concerns.

8 Seiter then commenced suit on August 26, 2008 in Superior Court for Clark County,  
9 Washington. Defendant YTC removed the action to this Court on September 25, 2008.

### 10 **Summary Judgment Standards**

11 A court must grant summary judgment if the pleadings and supporting documents, viewed  
12 in the light most favorable to the non-moving party, "show that there is no genuine issue as to any  
13 material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P.  
14 56(c); see also, Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). There is no genuine issue of  
15 fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the  
16 nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986);  
17 see also Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if there is  
18 sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the  
19 differing versions of the truth. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 253 (1986); T.W.  
20 Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9<sup>th</sup> Cir.1987).

21 When considering a summary judgment motion, the evidence of the non-movant is "to be  
22 believed, and all justifiable inferences are to be drawn in his favor." Anderson, at 248. These  
23 inferences are limited, however, "to those upon which a reasonable jury might return a verdict."  
24 Triton Energy Corp. v. Square D. Co., 68 F.3d 1216, 1220 (9<sup>th</sup> Cir. 1995). Rule 56(c) mandates the  
25 entry of summary judgment against a party who, after adequate time for discovery, fails to make a

1 showing sufficient to establish the existence of an element essential to that party's case, and on  
2 which the party will bear the burden of proof at trial. Celotex, at 322-23. Rule 56(e) compels the  
3 nonmoving party to “set forth specific facts showing that there is a genuine issue for trial” and not  
4 to “rest upon the mere allegations or denials of [the party's] pleading.” The nonmoving party must  
5 do more than “simply show that there is some metaphysical doubt as to the material facts.”  
6 Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). There is no  
7 issue for trial unless there is sufficient evidence favoring the non-moving party. Anderson, at 249.  
8 Summary judgment is warranted if the evidence is “merely colorable” or “not significantly  
9 probative.” Id. at 249-50. The nonmoving party must identify with reasonable particularity the  
10 evidence that precludes summary judgment. Keenan v. Allan, 91 F.3d 1275, 1279 (9<sup>th</sup> Cir. 1996).

11 The Ninth Circuit has consistently set a high standard for the granting of summary  
12 judgment in employment discrimination cases. Schnidrig v. Columbia Mach., 80 F.3d 1406,  
13 1410 (9<sup>th</sup> Cir. 1996). Because employment cases are so often fact intensive, courts have  
14 consistently found that summary judgment in favor of employers is seldom appropriate in  
15 employment cases. See e.g., McGinest v. GTE Service Corp., 360 F.3d 1104, 1112 (9<sup>th</sup> Cir.  
16 2004). A plaintiff “need produce very little evidence in order to overcome an employer's motion  
17 for summary judgment.” Chuang v. University of CA. Davis Bd of Trustees, 225 F.3d 1115, 1124  
18 (9<sup>th</sup> Cir. 2000).

### 19 **Constructive Discharge**

20 In an action for wrongful discharge, the discharge may be either express or constructive. To  
21 establish a claim for constructive discharge, a claimant must show: (1) that the employer  
22 deliberately made the working conditions intolerable for the claimant; (2) that a reasonable person  
23 in the claimant's position would be forced to resign; (3) that the claimant resigned solely because of  
24 the intolerable conditions; and (4) that the claimant suffered damages. Haubry v. Snow, 106 Wn.  
25 App. 666, 677, 31 P.3d 1186 (2001).



1 A claimant may show conditions are intolerable by demonstrating aggravating  
2 circumstances or a continuous pattern of discriminatory treatment. Id. Whether working conditions  
3 are intolerable is a question of fact and is not subject to summary judgment unless there is no  
4 competent evidence to establish the claim. Id. at 677-78; See also, Bulaich v. AT&T Info. Sys.,  
5 113 Wn.2d 254,261-62, 778 P.2d 1031 (1989); Wahl v. Dash Point Family Dental Clinic, Inc., 144  
6 Wn. App. 34, 44, 181 P.3d 864 (2008). Conditions taken together may establish a pattern of  
7 treatment that was intolerable. Again, these factual questions are for the jury. Allstot v. Edwards,  
8 116 Wn. App. 424, 434 65 P.3d 696 (2003).

9 An employee who is forced to permanently leave work for medical reasons may have  
10 been constructively discharged. Deliberately creating conditions so intolerable as to make the  
11 employee so ill that he or she must leave work permanently is functionally the same as forcing the  
12 employee to quit. Korslund v. DynCorp Tri-Cities Servs., 156 Wn.2d 168, 180; 125 P.3d  
13 119 (2005).

14 The Court finds that Plaintiff has raised a material issue of fact as to whether he was  
15 constructively discharged from employment. Plaintiff has introduced sufficient evidence to raise a  
16 jury issue as to whether YTC's audit of his expenses was conducted in retaliation for Plaintiff's  
17 submitting complaints regarding the safety of the MY507A and MJ01 tires, that YTC deliberately  
18 made Plaintiff's working conditions intolerable, that Plaintiff resigned due to intolerable working  
19 conditions, and he suffered damages.

20 Nonetheless, the general rule in Washington is an employer has the right to discharge an  
21 employee, with or without cause, in the absence of a contract for a specified period of time. Snyder  
22 v. Medical Service Corp. of Eastern, 145 Wn.2d 233, 238, 35 P.3d 1158 (2001); Roberts v. Atl.  
23 Richfield Co., 88 Wash.2d 887, 891, 568 P.2d 764 (1977). Accordingly, there is no cause of action  
24 for a constructive discharge unless it is wrongful.

### **Promise of Specific Treatment In Specific Circumstances**

Washington has recognized an exception to at-will employment when a company handbook or policy establishes "promises of specific treatment in specific situations and an employee is induced thereby to remain on the job and not actively seek other employment, those promises are enforceable components of the employment relationship" Korslund v. DynCorp Tri-Cities Services, Inc., 156 Wn. 2d 168, 184, 125 P.3d 119 (2005). Promises of specific treatment in specific circumstances are enforceable against the employer when the employee relies upon the promises in a handbook and the promises are breached by the employer. Hollenback v. Shriners Hospitals for Children, 149 Wn.App. 810, 826, 206 P.3d 337 (2009); Bulman v. Safeway, Inc., 144 Wn.2d 335, 354, 27 P.3d 1172 (2001). However, where the employee handbook gives the employer discretion when applying disciplinary procedures, the manual does not provide a promise of specific treatment in a specific circumstance. Hollenback, at 826; Drobny v. Boeing Co., 80 Wn.App. 97, 103, 907 P.2d 299 (1995).

In order for an at-will employee to prevail on this claim of wrongful employment termination on the basis of statements in the employer's policy manual, the employee must prove: (1) that the statements in the policy manual amounted to promises of specific treatment in specific situations; (2) that the employee justifiably relied upon any such promise; and (3) that the promise of specific treatment was breached. Bulman v. Safeway, Inc., 144 Wn.2d 335, 344, 27 P.3d 1172 (2001). Whether an employment policy manual contains a promise of specific treatment in specific situations, whether the employee justifiably relied on the promise, and whether the promise was breached are questions of fact, and only if reasonable minds could not differ in resolving these questions is it proper for the trial court to decide them as a matter of law. Klontz v. Puget Sound Power & Light Co., 90 Wn.App. 186, 190, 951 P.2d 280 (1998).

YTC maintains a "Code of Ethics" which places an affirmative duty on employees to report ethical violations. The Code requires employees to report any unethical, dishonest or illegal

1 conduct reasonably suspected to have been committed by another YTC employee. Any form of  
2 retaliation directed at an employee who notifies YTC of a suspected violation of the Code is  
3 prohibited.

4 The Code further provides that it is not a contract of employment and as an employee of  
5 YTC subject to the Code, employment is “at will” and YTC is free to terminate employment at any  
6 time for any reason or no reason.

7 Seiter alleges that the Code provides a specific promise that he would not be retaliated  
8 against for raising his concerns about tire safety. The promise prohibiting retaliation concerns  
9 employee notification of suspected violations of the Code, which in turn prohibits unethical,  
10 dishonest or illegal conduct.

11 Although a close question, the Court finds that Plaintiff has raised a genuine issue of fact as  
12 to whether YTC breached a promise prohibiting retaliation in regards to Plaintiff reporting tire  
13 safety concerns to management. See Korslund v. Dyncorp Tri-Cities Services, Inc., 156 Wash.2d  
14 168, 130-31, 125 P.3d 119 (2005) (question of fact remained, precluding summary judgment in  
15 employees' action against employer for breach of promise of specific treatment in specific  
16 situations, as to whether employer's non-retaliation policies expressed in employee manual on  
17 resolving employees' concerns and reporting ethical violations constituted promises to employees).

18 Defendant’s Motion for Summary Judgment on Plaintiff’s Second Cause of Action:  
19 Wrongful Termination - Code of Ethics is **DENIED**.

#### 20 **Termination in Violation of Public Policy**

21 Generally, absent a contract requiring cause for termination, employment relationships in  
22 Washington are at-will by either employer or employee. Thus, under the at-will doctrine, an  
23 employer can with limited exceptions discharge an employee with immunity. Bakotich v. Swanson,  
24 91 Wn.App. 311, 314, 957 P.2d 275 (1998); Thompson v. St. Regis Paper Co., 102 Wn.2d 219,  
25 232, 685 P.2d 1081 (1984).

1 One of the narrow exceptions to the at-will rule is for a violation of public policy. Sedlacek  
2 v. Hillis, 145 Wn.2d 379, 385, 36 P.3d 1014 (2001). The tort of wrongful discharge in violation of  
3 public policy is a narrow exception to this employment at-will doctrine. Id. In order to prevail on  
4 a claim under the tort of wrongful discharge in violation of public policy, a plaintiff must prove the  
5 following three elements: (1) that a clear public policy exists (the “clarity” element); (2) that  
6 discouraging the conduct in which the employee engaged would jeopardize the public policy (the  
7 “jeopardy” element); and (3) that the employee's public-policy-related conduct caused the dismissal  
8 (the “causation” element). Brundridge v. Fluor Federal Services, Inc., 164 Wn.2d 432, 440, 191  
9 P.3d 879 (2008); Gardner v. Loomis Armored, Inc., 128 Wn.2d 931, 941, 913 P.2d 377 (1996).

10 The Court finds that Plaintiff has failed to raise a material fact to establish the clarity  
11 element necessary to support his wrongful termination in violation of public policy claim and it  
12 fails. A disagreement over policy or a course of action, even one based on a good faith belief, does  
13 not make a proposed action illegal for purposes of the tort of wrongful discharge. A clear public  
14 policy is not founded upon the subjective belief of an employee. The public policy at issue must be  
15 one that has been either legislatively or judicially recognized.

16 In determining a wrongful termination in violation of public policy, Washington statutes and  
17 case law provide the primary sources for public policy, but other sufficient sources of public policy  
18 may be found in federal law in order to satisfy the clarity element. Anica v. Wal-Mart Stores, Inc.,  
19 120 Wn.App. 481, 495-96, 84 P.3d 1231 (2004). “Whether a particular statute contains a clear  
20 mandate of public policy is a question of law.” Hubbard v. Spokane County, 146 Wn.2d 699, 708,  
21 50 P.3d 602 (2002). The plaintiff bears the burden of showing that the dismissal violates a clear  
22 mandate of public policy. Thompson v. St. Regis Paper Co., 102 Wash.2d 219, 232, 685 P.2d 1081  
23 (1984). Thus, to avail himself of the narrow constructive discharge exception to the  
24 terminable-at-will doctrine, an employee must plead and prove that a stated public policy, either  
25 legislatively or judicially recognized, may have been contravened. Snyder v. Medical Serv. Corp.

1 of Eastern Washington, 145 Wn.2d 233, 239, 35 P.3d 1158 (2001).

2 Plaintiff asserts that the public policy element of his claim is provided for in the TREAD  
3 Act incorporated into the National Traffic and Motor Vehicle Safety Act of 1966, codified at 49  
4 U.S.C. § 30101-30170. Plaintiff asserts that he has offered ample evidence that YTC's executives  
5 knew that their actions were contrary to the TREAD Act, and that tire safety and warranty  
6 complaints triggered TREAD Act reporting, and despite the danger to commercial truck drivers,  
7 YTC ignored the complaints because they could harm YTC's reputation in the market place.

8 The Court disagrees. Other than providing a broad statement of the purpose of the TREAD  
9 Act, the Plaintiff has failed to provide any evidence that the TREAD Act has application to YTC's  
10 actions. In contrast, Defendant has responded with citation to authority that provides that there is  
11 no TREAD Act reporting requirement with respect to commercial truck tires under the  
12 circumstances of which Plaintiff was reporting; i.e. incidents not involving death or injury. See 49  
13 C.F.R. § 579.26. Thus, Plaintiff has failed to establish the first element (clarity) of a claim of  
14 termination in violation of public policy and YTC is entitled to summary judgment on this claim.

15 Defendant's Motion for Summary Judgment on Plaintiff's First Cause of Action: Wrongful  
16 Termination - Violation of Public Policy is **GRANTED**.

### 17 **Disability Discrimination**

18 To establish a prima facie case for disability discrimination under a failure to reasonably  
19 accommodate theory, Plaintiff must prove that: (1) he had a sensory, mental, or physical  
20 abnormality that substantially limited his ability to perform his job; (2) he was qualified to perform  
21 the essential functions of the job in question; (3) he gave the employer notice of the abnormality  
22 and its accompanying substantial limitations; and (4) upon notice, the employer failed to  
23 affirmatively adopt measures that were available to the employer and medically necessary to  
24 accommodate the abnormality. Hill v. BCTI Income Fund-I, 144 Wn.2d 172, 193, 23 P.3d 440  
25 (2001).

1 An employer does not owe a duty to accommodate until after the employer becomes aware  
2 of the employee's disability and physical limitations. Moreover, the employee bears the burden of  
3 giving notice of his disability to his employer. Goodman v. Boeing Co., 127 Wn.2d 401, 408, 899  
4 P.2d 1265 (1995).

5 Plaintiff suffers from dyslexia, a recognized disability under the ADA. See Vinson v.  
6 Thomas, 288 F.3d 1145, 1153-54 (9<sup>th</sup> Cir. 2002).

7 Plaintiff asserts that YTC was on notice of his disability, denied him promotional  
8 opportunities because of his disability, and failed to take his disability into account during the audit  
9 of his business expenses.

10 The Court disagrees. Although it may be said that YTC had notice of Plaintiff's dyslexia,  
11 Plaintiff has not presented any evidence of a denial of promotional opportunities or that his dyslexia  
12 prevented Plaintiff from responding to the audit of his business expenses. It further appears that  
13 any claim for discrimination in denial of promotional opportunities in the 1990's would be barred  
14 by the statute of limitations. YTC is entitled to summary judgment on the claim of disability  
15 discrimination.

16 Defendant's Motion for Summary Judgment on Plaintiff's Third Cause of Action: Disability  
17 Discrimination is **GRANTED**.

### 18 **Wage Claim**

19 When an employee ceases to work for an employer, the employer must pay the employee  
20 the wages due to him or her. RCW 49.48.010. If the employer fails to do so, the employee may  
21 bring a cause of action to recover the amount owed and is entitled to attorney fees. RCW  
22 49.48.030. Under RCW 49.52.070, double damages are appropriate when the employer's  
23 nonpayment of wages is willful and not the result of a bona fide dispute over the employer's  
24 obligation to pay. Chelan County Deputy Sheriffs' Ass'n v. Chelan County, 109 Wash.2d 282, 300,  
25 745 P.2d 1 (1987).

1 Plaintiff asserts that when responding to the company audit of his expenses, he discovered a  
2 miscalculation of reimbursement for lodging in his favor in the amount of \$306.50, which he claims  
3 as unpaid wages. Plaintiff has not supported this claim with any credible evidence. Nor has this  
4 Court been presented with any legal authority that the reimbursement of travel expenses is a “wage”  
5 for the purposes of Washington’s wage statutes.

6 Other than Plaintiff’s self-serving declaration, Plaintiff has failed to support this alleged  
7 wage loss with credible evidence. There is no evidence that this specific amount of wages, or any,  
8 are owed Plaintiff based on an assertion of his own error in his record keeping. The wage claim is  
9 subject to summary judgment.

10 Defendant’s Motion for Summary Judgment on Plaintiff’s Fourth Cause of Action:  
11 Violation of Washington Wage Statutes is **GRANTED**.

#### 12 **Conclusion**

13 For the above stated reasons, Defendant Yokohama Tire Corp’s Motion for Summary  
14 Judgment [Dkt. # 42] is **GRANTED IN PART AND DENIED IN PART**. Plaintiff’s First Cause  
15 of Action: Violation of Public Policy is **DISMISSED**. Plaintiff’s Third Cause of Action: Disability  
16 Discrimination is **DISMISSED**. Plaintiff’s Fourth Cause of Action: Violation of Wage Statutes is  
17 **DISMISSED**.

18 DATED this 3<sup>rd</sup> day of February, 2010.

19   
20 RONALD B. LEIGHTON  
21 UNITED STATES DISTRICT JUDGE  
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25